

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362  
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665  
Hon. David A. Faber

**DEFENDANTS' RESPONSE TO PLAINTIFFS'  
REQUEST TO MODIFY PRETRIAL BRIEFING SCHEDULE**

Plaintiffs request changes to the current pretrial briefing schedule, purportedly to allow issues to be addressed “on a realistic time frame” in light of the October 19, 2020 trial date. ECF No. 856 at 3. But Plaintiffs’ proposal would have the opposite effect. It actually would serve to advance the deadlines for certain briefs while the parties are racing to complete both fact and expert discovery, and it would push other briefs up to the brink of the trial date and even beyond.

From the moment this case was remanded, Plaintiffs have sought an expedited and early trial date. The schedule has required the parties to attempt to complete an extraordinary amount of work in a very short time. The compressed schedule, Defendants continue to believe,

jeopardizes their ability to prepare and mount their defenses. Plaintiffs' proposed briefing schedule compounds the problem.

First, it would have the parties and the Court continuing to address pretrial issues well into trial—a proposal Plaintiffs previously made and the Court rejected. *See* ECF No. 125; Status Conf. Tr. 30-31 (Mar. 5, 2020) (Court: rejecting Plaintiffs' proposed “bifurcated staggered bench trial” as “too confusing” and stating, “I’d like to have the discovery done” before starting trial to “keep all this compartmentalized and separated.”).

Second, Plaintiffs' proposed rolling schedule for *Daubert* motions would *advance* the due dates for some briefs, requiring them to be completed at the same time the parties are working furiously to ensure that all fact and expert discovery is concluded. This proposal would also mean—taking into account only Plaintiffs' experts, for the time being—20 different *Daubert* briefing schedules, with some briefing not completed until after the trial begins.

Third, Plaintiffs' requests for page limits and “statements of related rulings” likewise would not streamline anything, and are unnecessary. Where a prior ruling bears on the Court's consideration of an issue, both parties can be counted on to bring that to the Court's attention. As for page limits, we are mindful that the Court will have much to read and that it does not aid Defendants' cause to drown the Court in paper. Defendants have coordinated their briefing, filing joint briefs on nearly every issue. We intend to continue that practice, except in the event that our interests may diverge.

For now, given the slight adjustments to the expert-related dates made by the Court, Defendants respectfully propose that the Court also adjust the *Daubert* deadlines a correspondingly slight amount, and that other pretrial briefing deadlines remain the same.

Dated: August 12, 2020

Respectfully submitted,

***Cardinal Health, Inc.***

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 12<sup>th</sup> day of August, 2020, the foregoing **“Defendants’ Response to Plaintiffs’ Request to Modify Pretrial Briefing Schedule”** was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Steven R. Ruby  
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